

Amendment No. 2 to HB1242

Sargent  
Signature of Sponsor

**AMEND Senate Bill No. 1360**

**House Bill No. 1242\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 47, is amended by adding the following new chapter thereto:

47-51-101. This chapter shall be known and may be cited as the “Tennessee Litigation Financing Consumer Protection Act.”

47-51-102. As used in this chapter:

(1) “Consumer” means any natural person who resides, is present or is domiciled in this state, or who is or may become a plaintiff or complainant in a dispute in this state;

(2) “Litigation financier” means a person, entity or partnership engaged in the business of litigation financing; and

(3) “Litigation financing” or “litigation financing transaction”:

(A) Means a non-recourse transaction in which financing is provided to a consumer in return for a consumer assigning to the litigation financier a contingent right to receive an amount of the potential proceeds of the consumer’s judgment, award, settlement or verdict obtained with respect to the consumer’s legal claim; and

(B) Does not include:

(i) Legal services provided on a contingency fee basis, or advanced legal costs, where such services or costs are provided to or on behalf of a consumer by an attorney representing the consumer in the

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dispute and in accordance with the Tennessee Rules of Professional  
Conduct;

(ii) A commercial tort claim as defined by § 47-9-102; or

(iii) A claim under the Workers' Compensation Law, compiled in  
title 50, chapter 6.

47-51-103.

(a)

(1) No litigation financier shall engage in a litigation financing transaction  
in this state unless it is registered as a litigation financier in this state.

(2) A litigation financier that is a business entity or partnership is  
registered in this state if:

(A) It is in compliance with the bond requirements of subsection

(b);

(B) It has a status of active and in good standing as reflected in  
the records of the secretary of state; and

(C) Its charter, articles of organization, certificate of limited  
partnership, or other organizational document, or, if a foreign entity, its  
Tennessee application for a certificate of authority, contains a statement  
that it shall be designated as a litigation financier pursuant to this chapter.

(3) A litigation financier that is not a business entity or partnership is  
registered in this state if:

(A) It is in compliance with the bond requirements of subsection (b); and

(B) It files an application for registration as a litigation financier on a form prescribed by the secretary of state, along with a filing fee of one hundred dollars (\$100), that contains the following:

(i) Applicant's full legal name;

(ii) Business name of applicant, if any;

(iii) Physical street address and mailing address of the applicant;

(iv) A telephone number through which the applicant can be reached;

(v) The name, physical street address, mailing address, and telephone number for a Tennessee registered agent appointed to accept service of process on behalf of the applicant;

(vi) A statement that the applicant shall be designated as a litigation financier pursuant to this chapter; and

(vii) Any other information the secretary of state deems necessary.

(b)

(1) Each litigation financier shall file and have approved by the secretary of state a surety bond in the amount of fifty thousand dollars (\$50,000).

(2) Such bond shall be payable to this state for the use of the attorney general and reporter and any person who may have a cause of action against the obligor of the bond for any violation of this chapter. The bond shall continue in effect so long as a litigation financier is designated as a litigation financier in the records of the secretary of state.

(c) A litigation financier shall amend its registration with the secretary of state within thirty (30) days whenever the information contained in such record changes or becomes inaccurate or incomplete in any respect. A litigation financier that is not a business entity or partnership may amend its registration with the secretary of state by filing an amendment on a form prescribed by the secretary of state, along with a filing fee of twenty dollars (\$20.00).

(d) All documents filed pursuant to this section are public record.

(e) The secretary of state shall collect a fee of twenty dollars (\$20.00) for copying all filed documents pursuant to this act. All such copies shall be certified or validated by the secretary of state.

(f) The secretary of state, as appropriate, may promulgate rules in implementing this chapter, including but not limited to, the adoption of fees to cover any administrative costs relating to administering this act.

47-51-104. A litigation financier shall fulfill each of the following requirements when engaged in litigation financing:

(1) The terms of the litigation financing transaction shall be set forth in a written contract that is completely filled-in with no incomplete sections when the contract is offered or presented to the consumer;

(2) The litigation financing contract shall contain a right of rescission, allowing the consumer to cancel the litigation financing contract without penalty or further obligation if, within five (5) business days following the consumer's receipt of the funds or goods, or execution of the litigation financing contract, whichever is later, the consumer gives notice of the rescission and returns any money or goods already provided to the consumer by the litigation financier;

(3) The litigation financing contract shall contain a written acknowledgment by the consumer of whether the consumer is represented by an attorney in the dispute;

(4) If the consumer acknowledges that the consumer is represented by an attorney in the dispute, the litigation financing contract shall include a written acknowledgment executed by the consumer's attorney in the dispute in which the attorney acknowledges all of the following:

(A) The attorney has had the opportunity to review the litigation financing contract on behalf of the consumer;

(B) Whether the attorney is being paid on a contingency basis pursuant to a written fee agreement;

(C) That all proceeds of the legal claim shall be disbursed by either the trust account of the attorney representing the consumer in the dispute or a settlement fund established to receive the proceeds of the dispute from the defendant on behalf of the consumer;

(D) The attorney is representing the consumer with regard to the dispute that is the subject of the litigation financing contract; and

(E) The attorney has neither received nor paid a referral fee or any other consideration from or to the litigation financier, nor will the attorney in the future; and

(5) In the event that proceeds are paid into a settlement fund or trust, the litigation financier shall notify the administrator of the fund or trust of any outstanding liens arising from the litigation financing contract.

47-51-105. A litigation financier shall not:

(1) Pay or offer to pay commissions, referral fees or other forms of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees for referring a consumer to a litigation financier;

(2) Accept any commissions, referral fees, rebates or other forms of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees;

(3) Advertise false or misleading information regarding its products or services;

(4) Refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees; provided, if a consumer does not have legal representation, the provider shall refer the consumer to a local or state bar referral service operated by a bar association or a non-profit organization;

(5) Fail to promptly supply copies of any and all complete litigation financing contracts to the consumer and the attorney representing the consumer in the dispute;

(6) Attempt to obtain a waiver of any remedy, including but not limited to, compensatory, statutory, or punitive damages, that the consumer might otherwise have;

(7) Attempt to effect arbitration or otherwise effect waiver of a consumer's right to trial by jury;

(8) Offer or provide legal advice to the consumer regarding the litigation financing or the underlying dispute; or

(9) Assign a litigation financing contract in whole or part.

47-51-106.

(a) Litigation financing contracts shall contain the disclosures specified in this section, which shall constitute material terms of the litigation financing contract.

(b) Unless otherwise specified, the disclosures shall be typed in at least fourteen-point, bold font and be placed clearly and conspicuously within the litigation financing contract, as follows:

(1) On the front page under appropriate headings in not less than fourteen-point font, language specifying:

(A) The total amount of money to be provided to the consumer by the litigation financier as part of the litigation financing transaction;

(B) The maximum amount the consumer can be required to provide the litigation financier, including but not limited to, all fees, charges, interest or other consideration, under the terms of the litigation financing contract;

(C) The maximum annual percentage fee, which shall include, but not be limited to, all fees, charges, interest or other consideration received by a litigation financier in consideration for litigation financing; provided, the consumer may be charged for the litigation financing transaction under the terms of the litigation financing contract;

(D) The following:

**Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days from the date you signed this contract or received financing from [insert name of the litigation financier] by: returning the funds to [insert name, office address and office hours of the litigation financier] or by U.S. mail, [insert name and mailing address of litigation financier]. For purposes of the return deadline by U.S. mail, the postmark date on the returned funds or, if mailed by registered or certified mail, the date of the return receipt requested shall be considered the date of return.**

(2) Within the body of the litigation financing contract, the following:

**The litigation financier agrees that it has no right to and will not make any decisions about the conduct of your**

**lawsuit or dispute and that the right to make those decisions remains solely with you and your attorney;**

(3) Within the body of the litigation financing contract, in all capital letters contained within a box the following:

**IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO SATISFY THE PORTION ASSIGNED TO [INSERT NAME OF THE LITIGATION FINANCIER] IN FULL, YOU WILL NOT OWE [INSERT NAME OF THE LITIGATION FINANCIER] ANYTHING IN EXCESS OF YOUR RECOVERY.**

(4) Located immediately above the place on the litigation financing contract where the consumer's signature is required, the litigation financing contract shall include the following:

**Do not sign this contract before you read it completely. If this contract contains any incomplete sections, you are entitled to a completely filled-in copy of the contract prior to signing it. Before you sign this contract, you should obtain the advice of an attorney. Depending on the circumstances you may want to consult a tax advisor, a financial professional or an accountant.**

47-51-107. Any violation of this chapter shall make the litigation financing contract unenforceable by the litigation financier, the consumer or any successor-in-interest to the litigation financing contract.

47-51-108.

Any violation of this part shall constitute a violation of the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1, and shall be enforced solely by the attorney general and reporter at his or her discretion. For the purpose of



application of the Tennessee Consumer Protection Act of 1977, any violation of this part shall be construed to be an unfair or deceptive act or practice affecting the conduct, trade or commerce and subject to all sanctions, penalties and remedies provided in that act, including attorneys' fees and costs. Nothing in this chapter shall be construed to limit the exercise of powers or the performance of the duties of the attorney general and reporter, including those provided by the Tennessee Consumer Protection Act of 1977, which the attorney general and reporter is otherwise authorized or required to exercise or perform by law.

47-51-109.

(a) The contingent right to receive an amount of the potential proceeds of a legal claim may be assigned by a consumer and that assignment is valid for the purposes of obtaining litigation financing from a litigation financier.

(b) Any lien, subrogation interest or right of reimbursement against the consumer's legal claim shall take priority over any lien, subrogation interest or right of reimbursement of the litigation financier.

47-51-110.

(a) All consumers entering into litigation financing transactions shall pay the litigation financier an annual fee of not more than ten percent (10%) of the original amount of money provided to the consumer for the litigation financing transaction.

(b) Litigation financiers shall not charge a consumer the annual fee authorized by subsection (a) more than one (1) time each year with regard to any single legal claim regardless of the number of litigation financing transactions that the litigation financier enters into with the consumer with respect to such legal claim.

(c) Litigation financing transactions shall not exceed a term of three (3) years and are limited to a maximum yearly fee, which shall be calculated to include any underwriting and organization fees, and any other charges, fees, or consideration, not to

exceed three hundred sixty dollars (\$360) per year, up to a maximum of three (3) years, for each one thousand dollars (\$1,000) of the unpaid principal amount of the funds advanced to the consumer. The maximum yearly fee shall not include the annual fee pursuant to subsection (a).

(d) Litigation financiers shall not enter into an agreement with a consumer that has the effect of incorporating the consumer's obligations to the litigation financier that are contained in the original litigation financing transaction into a subsequent litigation financing transaction.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 3. For the purposes of promulgating rules, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2014, and shall apply to litigation financing contracts executed on or after that date, the public welfare requiring it.